

DIRECTOR OF CENTRAL INTELLIGENCE
Security Committee

SECOM-D-474

MEMORANDUM FOR: DCI Security Committee Principals

[redacted] Chairman,
Working Group on Unauthorized Disclosures

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FROM: Robert W. Gambino
Chairman

SUBJECT: Legislative Relief for Unauthorized Disclosures

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Much of the discussion at the recent SECOM conference concerned unauthorized disclosures and how they might better be brought under control. Mr. Lapham, in his remarks on the subject, noted the possibility of the Congress giving favorable consideration to a narrowly drawn statute criminalizing unauthorized disclosures of specific classes of information of broadly recognized sensitivity. A Committee staff member [redacted] drafted a proposal along those lines two years ago. With the approval of the then Deputy to the DCI for the Intelligence Community, it was submitted to the CIA General Counsel's office for review at that time. The commitment by the legal staff to a different approach (House Bills 12006 and 6234), and their heavy involvement in the E.O. 12036 exercise, apparently sidetracked a response. It is being resubmitted for consideration by Mr. Lapham in the light of his remarks to the SECOM conference. A copy is attached for your information. Any comments you may have concerning it would be welcome.

Robert W. Gambino

Attachment

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94TH CONGRESS
2D SESSION

H. R. 12006

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 19, 1976

Mr. McCLORY (for himself, Mr. TREEN, Mr. KASTEN, Mr. MICHEL, Mr. ANDERSON of Illinois, and Mr. BROOMFIELD) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend the National Security Act of 1947, as amended, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 102 of the National Security Act of 1947, as
4 amended, (50 U.S.C.A. 403) is further amended by adding
5 the following new subsection (g) :
6 “(g) In the interests of the security of the foreign
7 intelligence activities of the United States, and in order
8 further to implement the proviso of section 102 (d) (3) of
9 the Act that the Director of Central Intelligence shall be
10 responsible for protecting intelligence sources and methods
11 from unauthorized disclosure—

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1 “(1) Whoever, being or having been in duly au-
2 thorized possession or control of information relating to
3 intelligence sources and methods, or whoever, being or
4 having been an officer or employee of the United States,
5 or member of the armed services of the United States,
6 or a contractor of the United States Government, or an
7 employee of a contractor of the United States Govern-
8 ment, and in the course of such relationship becomes
9 possessed of such information imparts or communicates
10 it by any means to a person not authorized to receive it
11 or to the general public shall be fined not more than
12 \$5,000 or imprisoned not more than five years, or
13 both;

14 “(2) For the purposes of this subsection, the term
15 ‘information relating to intelligence sources and meth-
16 ods’ means any information, regardless of its origin,
17 that is classified pursuant to the provisions of a statute
18 or Executive order, or a regulation or a rule issued
19 pursuant thereto as information requiring a specific
20 degree of protection against unauthorized disclosure for
21 reasons of national security and which, in the interest of
22 the foreign intelligence activities of the United States,
23 has been specifically designated by a department or
24 agency of the United States Government which is au-
25 thorized by law or by the President to engage in foreign

1 intelligence activities for the United States as informa-
2 tion concerning—

3 “(A) methods of collecting foreign intelligence;

4 “(B) sources of foreign intelligence, whether
5 human, technical, or other; or

6 “(C) methods and techniques of analysis and
7 evaluation of foreign intelligence.

8 “(3) A person who is not authorized to receive
9 information relating to intelligence sources and methods
10 is not subject to prosecution for conspiracy to commit an
11 offense under this subsection, or as an accomplice, within
12 the meaning of sections 2 and 3 of title 18, United States
13 Code, in the commission of an offense under this sub-
14 section, unless he became possessed of such information in
15 the course of a relationship with the United States Gov-
16 ernment as described in paragraph (1) : *Provided, how-*
17 *ever,* That the bar created by this paragraph does not
18 preclude the indictment or conviction for conspiracy of
19 any person who is subject to prosecution under para-
20 graph (1) of this subsection.

21 “(4) It is a bar to prosecution under this subsec-
22 tion that—

23 “(A) at the time of the offense there did not
24 exist a review procedure within the Government
25 agency described in paragraph (2) of this subsection

1 through which the defendant could obtain review of
2 the continuing necessity for the classification and
3 designation;

4 “(B) prior to the return of the indictment or
5 the filing of the information, the Attorney General
6 and the Director of Central Intelligence did not
7 jointly certify to the court that the information was
8 lawfully classified and lawfully designated pursuant
9 to paragraph (2) at the time of the offense;

10 “(C) the information has been placed in the
11 public domain by the United States Government; or

12 “(D) the information was not lawfully classi-
13 fied and lawfully designated pursuant to paragraph
14 (2) at the time of the offense.

15 “(5) It is a defense to a prosecution under this
16 subsection that the information was communicated only
17 to a regularly constituted subcommittee, committee or
18 joint committee of Congress, pursuant to lawful demand.

19 “(6) Any hearing by the court for the purpose of
20 making a determination whether the information was
21 lawfully classified and lawfully designated, shall be in
22 camera;

23 “(A) at the close of any in camera review, the
24 court shall enter into the record an order pursuant

1 “(B) any determination by the court under this
2 paragraph shall be a question of law.

3 “(7) Whenever in the judgment of the Director of
4 Central Intelligence any person is about to engage in
5 any acts or practices which will constitute a violation of
6 this subsection, the Attorney General, on behalf of the
7 United States, may make application to the appropriate
8 court for an order enjoining such acts or practices, and
9 upon a showing that such person is about to engage in
10 any such acts or practices, a permanent or temporary
11 injunction, restraining order, or other order may be
12 granted. In the case of an application for an order under
13 this paragraph—

14 “(A) the court shall not hold an in camera
15 hearing for the purpose of making a determination
16 as to the lawfulness of the classification and designa-
17 tion of the information unless it has determined after
18 giving due consideration to all attending evidence
19 that such evidence does not indicate that the matter
20 has been lawfully classified and designated;

21 “(B) the court shall not invalidate the classifi-
22 cation or designation unless it finds that the judg-
23 ment of the department or agency, pursuant to para-
24 graph (2), as to the lawfulness of the classification
25 and designation was arbitrary, capricious, and with-